



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

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March 2, 2004

Mr. David McKay  
Conservation Planning Team Leader  
Conservation Operation Division  
USDA-Natural Resources Conservation Service  
P.O. Box 2890  
Washington, D.C. 20013-2890

Re: Conservation Security Program

Dear Mr. McKay:

I would like to thank the U.S. Department of Agriculture for the opportunity to comment on the proposed rules for the Conservation Security Program (7 CFR 1469). I write as a member of Governor Arnold Schwarzenegger's cabinet, with responsibilities for the promotion and protection of California's food production resources. I submit the enclosed comments with the expectancy that the Conservation Security Program (CSP) will become the nation's premiere farm and ranch conservation program. With this aim in mind, I am pleased to offer for your consideration the following comments on behalf of the California Department of Food and Agriculture.

The following comments were developed in consultation with the California Environmental Protection Agency, the agency responsible for, among other things, water quality. We also collaborated on these comments with the California Resources Agency, which is responsible for wildlife, water conservation, agricultural land protection and other resources. Finally, these comments reflect the shared concerns of our stakeholders, including resource conservation districts, and agricultural and environmental groups. These agencies and organizations may also be submitting comments directly.

The CSP was enacted by Congress as part of the 2002 Farm Bill. According to USDA Secretary Ann Veneman, the short-hand purpose of the CSP is to "reward the best and motivate the rest." The Department values the importance of recognizing and honoring the good work already being done by growers in California and elsewhere. We also believe that it is important to advance the cause of conservation and to increase the efficiency of the use of the nation's limited natural resources. Therefore, we believe that the focus of this program should equally focus on helping those who are moving towards, or want to begin moving toward, managing natural resources in a sustainable manner. To serve both purposes, the CSP needs to be more accessible to a greater number of growers than it will be under the proposed rules.

Unfortunately, the 2004 CSP budget is not sufficient to fund the program as a conservation entitlement program that is both an entitlement program and a program that rewards existing conservation, as well as providing incentives for new conservation. Our first general comment addresses this situation.

1. **A Capped Entitlement Program v. A Pilot Entitlement Program.** The proposed regulations have dubbed the CSP as an "entitlement program with a cap." In our estimation, the initial funding is not sufficient to label the program as an entitlement. As funded, the rules propose to set the bar so high for participation that only the very best practicing conservationists can qualify to participate. The rules seem focused not on providing incentives and rewards for conservation, but on dealing with a funding cap, with limits and hurdles designed to limit participation to stay within the cap.



We recommend that the rules be rewritten, or that supplemental rules be issued in a way that anticipates a more comprehensive national conservation entitlement program. We recommend this because actual and proposed funding for this program prevents rules that would allow full implementation of the intended program at this point. We offer an alternative approach that may permit the program to be handled in a manner that anticipates future funding augmentation.

The Department recommends a nationwide pilot program with a clear eye towards full implementation of CSP as an entitlement program. We propose a nation-wide pilot project through a deliberately targeted and competitive grant process. Under this alternative proposed roll-out of the program, the initial \$41 million could be divided regionally in order to capture the nation's agricultural, socio-economic and environmental diversity. Depending on the sufficiency of the regional allocations, one or more states from each region could be selected based on the innovativeness of their proposals. Under this proposal, national rules for CSP would need to be liberal in order to give room to states for creativity.

Specifically, we recommend that the "Partnerships and Cooperation Program" (Section 2003 of the Farm Bill) be given rules and that CSP implementation be linked to that program to encourage innovative local and state conservation partnerships to implement CSP within the context of Section 2003.

Our proposal gives states and their partners an opportunity to draw from their experiences and unique local conditions to experiment with the implementation of CSP. It would also promote innovation, generating ideas and demonstrated successes from around the country from which final CSP rules could be drafted.

Whether a rewrite of the rules is conducted or a version of the roll-out alternative presented by the proposed rules is adopted, we offer the following more specific comments.

2. **Priority Watersheds.** (Section 1469.5) Under the proposed rules, priority watersheds, and criteria for their ranking, will be selected at NRCS headquarters in Washington, D.C. We recommend that this process of selection involve to the maximum extent possible the expertise and local knowledge of resource conservation issues of NRCS' state and local conservation partnerships. In our experience, most resource conservation districts and their state and local partners, know where their priority watersheds are. We recommend this knowledge base be tapped.

Further, in our estimation the watershed selection process should:

- a. Provide for ample input for local resource conservation districts, state technical advisory committees and state conservationists on the selection of priority watersheds;
- b. Be transparent and the draft criteria for selection, as well as the draft watershed priority list, be available for review and comment;
- c. Include a representative cross section of geographic areas and differing crop and livestock production, including vineyards, orchards, and irrigated field crops, as well as traditional commodities;

- d. Target areas where producers' past practices, participation in watershed planning, or degree of organization indicates they are prepared to participate in significant numbers in these early pilot projects;
- e. Demonstrate strong partnerships with local and state agencies; and
- f. Demonstrate an innovative approach to implementing CSP in an integrated fashion along with other NRCS, local and state conservation programs.

Finally, we recommend that if the pilot project roll-out option we have recommended above is not adoptable, watersheds be selected on a regional basis to ensure geographic distribution of early CSP experiences under the unique circumstances of each region.

3. **Resource Concerns.** (Section 1469.4) This is another aspect of the rules where local and state experience and knowledge could be tapped. The proposed rules limit priority resource concerns to soil and water quality. Additional concerns may be identified by the NRCS Chief for each enrollment.

We recommend that priority resource concerns identified in the rules include all of those soil, water, air, plant and animal concerns that have been identified by the NRCS. In addition, we recommend that the state and local partnerships be given the latitude to identify what those concerns should be, based on priorities of the state technical advisory committee of each state, with input from the local work groups of each county.

An example of the need for this flexibility is the focus of the soil quality resource concern on soil erosion and soil organic matter (Section 1469.3). In California and much of the West, the issue of Highly Erodible Soils (HEL) is not as important a resource concern as is soil salinity. The rule's definition of soil quality does not appear to address this concern. Other resource concerns important to California that are not addressed by the proposed rules include: Threatened and endangered species conservation, air quality, invasive and exotic weeds, nutrient management, energy conservation, waste management for energy production, prime farmland protection, and regulatory water quality concerns that can be quite location-specific, such as TMDLs on water temperature.

4. **Conservation Practices (Section 1469.8).** The CSP was enacted by Congress as a means to integrate NRCS conservation practices and programs, and to integrate those practices and programs with those of state and local conservation organizations. The proposed rules authorize the NRCS Chief to designate a list of conservation practices for CSP payment. NRCS state conservationists may petition to the Chief to seek approval for a targeted subset of eligible practices. The Chief may approve of new conservation technologies on a pilot basis.

We recommend that the identification of conservation practices be delegated to state technical advisory committees and state conservationists in the final rule. Again, we recommend that state and local conservation partnerships be given as much latitude to design a CSP program that works best with their unique conservation circumstances. Also, we recommend that state and local partnerships should be given authority by the rules to use the NRCS Field Office Technical Guides as the palate for designing a suite of practices that meets the resource concerns that their local CSP program attempts to address.

More specifically, Section 1469.23 appears to exclude payments for new practices for equipment or non-land based structures. California livestock operators have expressed concern that this provision may limit the installation of **rangeland livestock watering facilities** necessary for effective distribution of livestock, including exclusion of livestock from environmentally sensitive areas. We recommend that this rule be clarified to ensure that livestock watering facilities will qualify for payment under CSP.

Also, Section 1469.23 would exclude payments for feedlot structures. **Management of feedlot waste** this is one of California's top agriculturally-related air and water quality issues. Many feedlots are running environmentally superior operations, yet would not be recognized under this rule. Others face compliance which could force them out of business. We recommend that waste management facilities for feeding operations not be excluded from qualified practices, but left to state and local discretion.

5. **Incidental Forest Land** (Section 1469.3). The rules would define incidental forest land in terms of stocking rates. In addition, we recommend that the definition include a criterion that gives some measure of how integrated the forest land is with the qualified agricultural lands. We recommend that these lands include agroforestry for water quality management, energy production and wind breaks for erosion and water conservation. For forest lands that are not actively managed for production, incidental forest lands should be limited to relatively small blocks of intermingled forested areas bounded on at least three sides by agricultural production, including grazing lands.
6. **Enhancement Payments** (Section 1469.23). We agree with the focus of enhanced payments on monitoring, research and on-farm demonstration. We also agree with the discretion left to state technical advisory committees and the state conservationists to determine practices to be supported by enhanced payments. Finally, we support the discretion in the rules for payment rates to be determined at the state and local levels.
7. **Base Payments** (Section 1469.23). The CSP statute requires that rental payments be regional and not be less than the national average rental rate. We support the regional rental rate and recommend that the rules reflect rental rates that will not be less than the national average. As proposed, the rental rates are too low to serve as an incentive for participation.

This poses two barriers to achieving conservation. The first is that this level of payment will not act as an incentive for participation. Second, base payments calculated on present use land value discourages the incentive to manage the land according to its inherent carrying capacity. A base payment using present land value could have the unintended consequence of encouraging more intensive uses on environmentally sensitive lands, rather than encouraging management according to the land's capability. Also, using present land value as the basis for the base payment could penalize landowners who forego intensification of use on sensitive lands.

8. **Cost-share for Conservation Practices.** We agree that where other NRCS cost-share programs are available to help growers meet the standards of CSP (i.e., EQIP), CSP does not need to duplicate these programs and redirect its limited budget. We would recommend doing

away with the proposed fractional cost-share rates and replace them with cost-share augmentation that complements existing cost-share programs. For example, existing EQIP cost-share rates could be increased for high priority and costly practices under all tiers.

To summarize our comments on the varying payments offered under CSP, we believe that the proposed rules do not offer meaningful incentives to entice new participants into the state and local conservation partnership. More resources should be dedicated to helping growers climb the CSP three-tier ladder rather than just focusing on those who have made it. Again, we recommend that greater flexibility be given to state and local conservation partnerships to design their CSP programs, including the flexibility to balance allocation of payments among base payments, maintenance, cost-share and enhancement payments.

9. **Contract Violations** (Section 1469.25). We recommend that a provision be made for "acts of God." In the West, fluctuations in weather and rainfall may require state water managers to allow for temporary water transfers to meet high priority environmental or urban water needs. If growers need to make accommodations in practices in these situations that otherwise protect the resources, they should not be penalized.
10. **Contract Renewal** (Section 1469.21). The rules would not allow for contract renewals after the first five-year contract. It is not clear from the rules why this limitation is necessary. To encourage long-term conservation investments and maintenance, it would seem that long-term commitments would be encouraged. We agree with the shorter contract of five to ten years, but recommend that contract renewals be encouraged.
11. **Definition of Agricultural Operations** (Section 1469.3). The proposed definition of an agricultural operation may be limiting in California. Many of our producers own farming and ranching operations that are widely spread and diverse. The rules should allow for the conservation of each holding according to its needs rather than according to a unified conservation plan for all of them. We recommend that the determination of whether non-contiguous holdings should be under a separate CSP contract, or part of one contract, be left to the local work groups. Consistent with this recommendation, we suggest that the limitation for one contract per operator be eliminated and that the number of contracts per participant be left to the local work group.
12. **Leased or Rented Land** (Section 1469.4). Landowners with rented or leased lands whose control is not secure for the duration of the CSP contract would not qualify for CSP payments, but would nevertheless be required to be managed according to NRCS conservation standards. We support the idea of holistic management, but believe that this rule could penalize some growers through no fault of their own. Instead, we recommend that the decision on whether or not to require conservation treatment of leased lands that are not controlled by the grower for the term of the CSP contract, be left to the local work group on a case-by-case basis.
13. **"Considered Planted Acreage."** The California rice industry has raised a concern about the 2002 Farm Bill that could undo many of the wildlife conservation gains that they have been able to achieve by short-term set-asides marginal crop lands for habitat. In past Farm Bills, there has been an accommodation for these conservation set-asides that allowed them to be counted in the grower's base acreage. The 2002 Farm Bill does not include this provision as a universal clause for all Farm Bill programs.

However, the CSP does include such language. We recommend that language be added to the rules' definitions that clarifies the statutory definition (Section 1470.3) and ensures that the set-asides for wildlife will continue to be eligible for future updates of both crop yield and base acreage in accordance with Title I (Commodity Price Support) provision of future agricultural farm support legislation.

14. **Organic Farming as Conservation.** Organic farmers in this state point out that the rules make no mention of how organic farming systems and practices will be treated in CSP. Our review of the rules also failed to turn up a clear treatment of organic farming as a resource management system or practice. Because of the reduced use of chemical inputs and soil building practices of organic farming, we believe that CSP should link to National Organic Program and offer simultaneous qualification for grower participation if they can meet the standards of both.
15. **Technical Assistance** (Section 1469.9). The proposed rules present a complex and labor-intensive conservation program that will require an extraordinary effort on the part of very limited NRCS field staff resources. The fifteen percent cap on technical assistance is far below the percentage of technical assistance required for NRCS staff to implement less labor intensive programs. The rules try to work with this cap. For example, the rules propose grower self-assessment to establish benchmark conditions. However, we believe that this approach, at least at first, could generate more work for NRCS than it will save. Also, this approach could act as a disincentive for landowner participation. We do not have a recommendation for this provision, but do suggest that the impacts of the self-assessment on grower participation, as well as on net labor savings be reconsidered.

Another approach that the rules propose to help manage workload is the limited window for enrollments versus continuous enrollments. We believe that continuous enrollments may actually make it easier for NRCS to manage the workload with limited staff resources. A periodic window for enrollment will require staff to periodically drop all other work to deal with application evaluation and benchmark assessments, while a continuous enrollment will enable this work to be integrated into the conservationist's day-to-day workload. We recommend your reconsideration of this provision of the rule.

We recommend that USDA work with Congress for greater flexibility with respect to technical assistance. These conservation programs exemplify the kinds of local, voluntary and business-friendly approaches to environmental protection and improvement we need to see more of in California. We believe that the one-on-one relationships through which conservation is provided to landowners by NRCS and RCD conservationists is where "the rubber meets the road" in conservation programs. Restricting growers' access to field conservationists to help them participate and excel in the program, is counter-productive to the goals of CSP.

A final comment under technical assistance relates to the built-in regional inequity of CSP. The California Association of Resource Conservation Districts recently shared a statistic that showed that the State of Kansas has almost the same level of technical staff resources, and a similar number of technical service centers/offices, as California. Yet, the numbers appear to indicate that Kansas' production does not approach California's in valuation, and then appear to be serious equations in terms of population pressures and the per capita benefits from the federal conservation investment of tax dollars on endangered species, land, water, and air as

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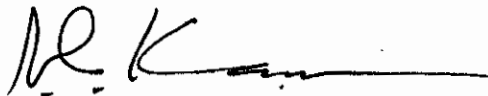
California. If CSP, and other conservation programs are to pay conservation dividends according to national pay-back in priority conservation, this inequity needs to be addressed. It is difficult for California to participate in a program such as CSP on the level with other states with this level of disparity between USDA technical assistance capacity and resource concerns.

In summary, the CSP rules should be rewritten to reflect the intent of Congress and the authors of CSP. This means that a nation-wide integrated conservation entitlement program that will maintain the vitality of agriculture in America in the face of dissolving trade concessions is needed. The program should also be designed to raise expectations for all growers so that the American public will help them conserve resources and provide off-farm environmental benefits. It should be a program whose threshold for participation does not seem too narrow, but that encourages landowners to participate. Towards that end, we encourage rules that will provide adequate incentives across all program tiers so that rewards for good work are balanced with incentives for new conservation.

The rules should also encourage innovation at the local and state level. CDFA proposed an early pilot stage of the program as funding levels are ramped up to a full entitlement program. We call for the pilot program and the resulting final rules to be flexible and allow conservation to be locally-led. This nation is too diverse for a top-down approach. Solutions need to be crafted locally, as the very ideas that are needed to fine-tune program rules already exist locally.

Thank you for your time in considering these comments.

Sincerely,



A. G. Kawamura  
Secretary

AG:kt:cm

cc: Ann M. Veneman, Secretary  
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